

guideline, must be identified as a State imposed requirement.

(d) Funds provided under the Act may not be used for the purpose of directly providing incentives or inducements to relocate a business or enterprise from one State to another State if the relocation would result in a reduction in the number of jobs available in the State where the business enterprise is located before the incentives or inducements are offered.

(e) A State may not take into consideration payments under the Act in determining for any educational agency or institution in that State the eligibility for State aid or the amount of State aid with respect to public education within the State.

(Approved by the Office of Management and Budget under Control No. 1830-0030)

(Authority: 20 U.S.C. 2421, 2424, 2466c, 2468b, 2468c, and 2468e(a)(2))

#### **§ 400.10 What are the reporting requirements?**

(a) Recipients of grants and cooperative agreements shall report information about students, projects, evaluations, dissemination, expenditures, accomplishments, and any other information, as may be required by the Secretary.

(b) Recipients of grants and cooperative agreements under—

(1) Parts 401, 402, 405, 408, 409, 413, 415, 416, 417, 419, 422, 423, 424, 425, 426, 427, and 428 shall submit performance reports at least semi-annually;

(2) Part 412 shall submit monthly progress and financial status reports and an annual impact report; and

(3) Part 413 shall submit monthly exception reports and quarterly financial status reports.

(c) Recipients of grants under parts 403, 406, and 407 shall submit annual performance and financial reports.

(Approved by the Office of Management and Budget under Control No. 1830-0030)

(Authority: 20 U.S.C. 2301 *et seq.*)

## **PART 401—INDIAN VOCATIONAL EDUCATION PROGRAM**

### **Subpart A—General**

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401.31 What are the evaluation requirements?

AUTHORITY: 20 U.S.C. 2313(b), unless otherwise noted.

SOURCE: 57 FR 36730, Aug. 14, 1992, unless otherwise noted.

### **Subpart A—General**

#### **§ 401.1 What is the Indian Vocational Education Program?**

The Indian Vocational Education Program provides financial assistance to projects that provide vocational education for the benefit of Indians.

(Authority: 20 U.S.C. 2313(b))

#### **§ 401.2 Who is eligible for an award?**

(a) The following entities are eligible for an award under this program:

(1) A tribal organization of any Indian tribe that is eligible to contract with the Secretary of the Interior

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under the Indian Self-Determination and Education Assistance Act or under the Act of April 16, 1934.

(2) A Bureau-funded school offering a secondary program.

(b) Any tribal organization or Bureau-funded school described in paragraph (a) of this section may apply individually or jointly as part of a consortium with one or more eligible tribal organizations or schools.

(c)(1) A consortium shall enter into an agreement signed by all members of the consortium, and designating one member of the consortium as the applicant and grantee.

(2) The agreement must detail the activities each member of the consortium plans to perform, and must bind each member to every statement and assurance made in the application.

(3) The applicant shall submit the agreement with its application.

CROSS-REFERENCE: See 34 CFR 75.127-75.129—Group applications.

(Authority: 20 U.S.C. 2313(b))

### § 401.3 What activities may the Secretary fund?

(a) The Secretary provides financial assistance through grants, contracts, or cooperative agreements to plan, conduct, and administer projects or portions of projects that are authorized by and consistent with the purposes of the Act. In the case of a grant to a Bureau-funded school, the Secretary provides a minimum grant of \$35,000.

(b) Projects funded under this program are in addition to other programs, services, and activities made available under other provisions of the Act to—

(1) Eligible Indians in need of vocational education; and

(2) Eligible Indian tribes as community-based organizations that receive State vocational education assistance.

(c) An award under this program may be used to provide a stipend to a student who—

(1) Is enrolled in a vocational education project funded under this program; and

(2) Has an acute economic need that cannot be met through work-study programs.

(d) The amount of a stipend may be the greater of either the minimum

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hourly wage prescribed by State or local law, or the minimum hourly wage set under the Fair Labor Standards Act. A stipend may not be paid for time a student is not in attendance in a project.

(Authority: 20 U.S.C. 2313(b) (1) and (3))

### § 401.4 What regulations apply?

The following regulations apply to the Indian Vocational Education Program:

(a) The regulations in 34 CFR part 400 (except that 34 CFR parts 79 and 82 do not apply to this program).

(b) The regulations in this part 401.

(Authority: 20 U.S.C. 2313(b))

### § 401.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The following definitions also apply to this part:

*Act of April 16, 1934* means the Federal law commonly known as the “Johnson-O’Malley Act” that authorizes the Secretary of the Interior to make contracts for the education of Indians and other purposes (25 U.S.C. 455–457).

*Acute economic need* means an income that is at or below the national poverty level according to the latest available data from the Department of Commerce or the Department of Health and Human Services Poverty Guidelines.

*Bureau* means the Bureau of Indian Affairs, Department of the Interior.

*Bureau-funded school* means—

(1) A Bureau-operated elementary or secondary day or boarding school or a Bureau-operated dormitory for students attending a school other than a Bureau school;

(2) An elementary or secondary school or a dormitory that receives financial assistance for its operation under a contract or agreement with the Bureau under sections 102, 104(1), or 208 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450f, 450h(1), and 458d); or

(3) A school for which assistance is provided under the Tribally Controlled Schools Act of 1988.

(Authority: 20 U.S.C. 2313(b); 25 U.S.C. 2019 (3), (4), and (5))

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*Indian* means a person who is a member of an Indian tribe.

(Authority: 25 U.S.C. 450b(d))

*Indian tribe* means any Indian tribe, band, Nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) that is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(Authority: 25 U.S.C. 450b(e))

*Stipend* means a subsistence allowance for a student that is necessary for the student to participate in a project funded under this program.

*Tribal organization* means the recognized governing body of any Indian tribe or any legally established organization of Indians that is controlled, sanctioned, or chartered by that governing body or that is democratically elected by the adult members of the Indian community to be served by the organization and that includes the maximum participation of Indians in all phases of its activities. However, in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each of those Indian tribes must be a prerequisite to the letting or making of that contract or grant.

(Authority: 20 U.S.C. 2313(a)(1)(A), (b); 25 U.S.C. 450b(l))

### Subpart B—How Does One Apply for an Award?

#### § 401.10 How are applications submitted?

(a) An application from a tribal organization, other than a Bureau-funded school, must be submitted to the Secretary by the Indian tribe.

(b) An application for a project to serve more than one Indian tribe must be approved by each tribe to be served.

(c) An application from a Bureau-funded school may be submitted directly to the Secretary.

(Authority: 20 U.S.C. 2313(b)(1); 25 U.S.C. 450b)

### Subpart C—How Does the Secretary Make an Award?

#### § 401.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 401.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 401.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced through a notice published in the FEDERAL REGISTER, the Secretary may assign the reserved points among the criteria in § 401.21.

(e) In addition to the 100 points to be awarded based on the criteria in § 401.21, the Secretary awards—

(1) Up to 5 points to applications that propose exemplary approaches that involve, coordinate with, or encourage tribal economic development plans; and

(2) Five points to applications from tribally controlled community colleges that—

(i) Are accredited or are candidates for accreditation by a nationally recognized accreditation organization as an institution of postsecondary vocational education; or

(ii) Operate vocational education programs that are accredited or are candidates for accreditation by a nationally recognized accreditation organization and issue certificates for completion of vocational education programs.

(Authority: 20 U.S.C. 2313(b))

#### § 401.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (20 points) The Secretary reviews each application to determine the extent to which it—

(1) Proposes measurable goals for student enrollment, completion, and placement (including placement in jobs or military specialties and in continuing education or training opportunities) that are realistic in terms of stated needs, resources, and job opportunities in each occupation for which training is to be provided;

(2) Proposes goals that take into consideration any related goals or standards developed for Job Opportunities and Basic Skills (JOBS) programs (42 U.S.C. 681 *et seq.*) and Job Training Partnership Act (JTPA) (29 U.S.C. 1501 *et seq.*) training programs operating in the area, and, where appropriate, any goals set by the State board for vocational education for the occupation and geographic area;

(3) Describes, for each occupation for which training is to be provided, how successful program completion will be determined in terms of academic and vocational competencies demonstrated by enrollees prior to completion and any academic or work credentials acquired by enrollees upon completion;

(4) Demonstrates the active commitment in the project's planning and operation by advisory committees, tribal planning offices, the JOBS program office, the JTPA program director, and potential employers such as tribal enterprises, private enterprises (on or off reservation), and other organizations;

(5) Is targeted to individuals with inadequate skills to assist those individuals in obtaining new employment; and

(6) Includes a thorough description of the approach to be used including some or all of the following components:

- (i) Methods of participant selection.
- (ii) Assessment and feedback of participant progress.
- (iii) Coordination of vocational instruction, academic instruction, and support services such as counseling, transportation, and child care.
- (iv) Curriculum and, if appropriate, approaches for providing on-the-job training experience.

(b) *Need.* (15 points) The Secretary reviews each application to determine the extent to which the project addresses specific needs, including—

(1) The job market and related needs (such as educational level) of the target population;

(2) Characteristics of that population, including an estimate of those to be served by the project;

(3) How the project will meet the needs of the target population; and

(4) A description of any ongoing and planned activities relative to those needs, including, if appropriate, how the State plan developed under 34 CFR 403.30 through 403.34 is designed to meet those needs.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The establishment of objectives that are clearly related to project goals and activities and are measurable with respect to anticipated enrollments, completions, and placements;

(2) A management plan that describes the chain of command, how staff will be managed, how coordination among staff will be accomplished, and timelines for each activity; and

(3) The way the applicant intends to use its resources and personnel to achieve each objective.

(d) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used on the project;

(iii) The time, including justification for the time that each one of the key personnel, including the project director, will commit to the project; and

(iv) Subject to the Indian preference provisions of the Indian Self-Determination Act (25 U.S.C. 450 *et seq.*) that apply to grants and contracts to tribal organizations, how the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(2) To determine personnel qualifications, the Secretary considers—

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(i) The experience and training of key personnel in project management and in fields particularly related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(e) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project activities;

(2) Costs are reasonable in relation to the objectives of the project and the number of participants to be served; and

(3) The budget narrative justifies the expenditures.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which—

(1) The plan identifies, at a minimum, types of data to be collected and reported with respect to the academic and vocational competencies demonstrated by participants and the number and kind of academic and work credentials acquired by participants who complete the training;

(2) The plan identifies, at a minimum, types of data to be collected and reported with respect to the achievement of project goals for the enrollment, completion, and placement of participants. The data must be broken down by sex and by occupation for which the training was provided;

(3) The methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable; and

(4) The methods of evaluation provide periodic data that can be used by the project for ongoing program improvement.

(g) *Employment opportunities.* (10 points) The Secretary reviews each application to determine the quality of the plan for job placement of participants who complete training under this program, including—

(1) The expected employment opportunities (including any military specialties) and any additional educational or training opportunities that

are related to the participants' training;

(2) Information and documentation concerning potential employers' commitment to hire participants who complete the training; and

(3) An estimate of the percentage of trainees expected to be employed (including self-employed individuals) in the field for which they were trained following completion of the training.

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(Authority: 20 U.S.C. 2313(b))

### § 401.22 What additional factors may the Secretary consider?

The Secretary may decide not to award a grant or cooperative agreement if—

(a) The proposed project duplicates an effort already being made; or

(b) Funding the project would create an inequitable distribution of funds under this part among Indian tribes.

(Authority: 20 U.S.C. 2313(b))

### § 401.23 Is the Secretary's decision not to make an award under the Indian Vocational Education Program subject to a hearing?

(a) After receiving written notice from an authorized official of the Department that the Secretary will not award a grant or cooperative agreement to an eligible applicant under § 401.2(a)(1), an Indian tribal organization has 30 calendar days to make a written request to the Secretary for a hearing to review the Secretary's decision.

(b) Within 10 business days of the Department's receipt of a hearing request, the Secretary designates a Department employee who is not assigned to the Office of Vocational and Adult Education to serve as a hearing officer. The hearing officer conducts a hearing and issues a written decision within 75 calendar days of the Department's receipt of the hearing request. The hearing officer establishes rules for the conduct of the hearing. The hearing officer conducts the hearing solely on the basis of written submissions unless the officer determines, in accordance with standards in 34 CFR 81.6(b), that oral argument or testimony is necessary.

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(c) The Secretary does not make any award under this part to an Indian tribal organization until the hearing officer issues a written decision on any appeal brought under this section.

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(Authority: 20 U.S.C. 2313(b); 25 U.S.C. 450f)

### **Subpart D—What Conditions Must Be Met After an Award?**

#### **§ 401.30 How do the Indian Self-Determination Act and the Act of April 16, 1934 affect awards under the Indian Vocational Education Program?**

(a) Grants, cooperative agreements, or contracts with tribal organizations are subject to the terms and conditions of section 102 of the Indian Self-Determination Act (25 U.S.C. 450f). These awards must be conducted by the recipient or contractor in accordance with the provisions of sections 4, 5, and 6 of the Act of April 16, 1934, that are relevant to the projects administered under this part. Section 4 contains requirements pertaining to submission of an education plan by a contractor. Section 5 pertains to participation of parents of Indian children. Section 6 pertains to reimbursement for educating non-resident students.

(b) Grants to Bureau-funded schools are not subject to the requirements of the Indian Self-Determination Act or the Act of April 16, 1934.

(Authority: 20 U.S.C. 2313 (b)(1)(A)(ii)(I) and (II))

#### **§ 401.31 What are the evaluation requirements?**

(a) Each grantee shall annually provide and budget for either an internal or external evaluation, or both, of its activities.

(b) The evaluation must be both formative and summative in nature.

(c) The annual evaluation must include—

(1) Descriptions and analyses of the accuracy of records and the validity of measures used by the project to establish and report on the academic and vocational competencies demonstrated and the academic and work credentials acquired;

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(2) Descriptions and analyses of the accuracy of records and the validity of measures used by the project to establish and report on participant enrollment, completion, and placement by sex and socio-economic status for each occupation for which training has been provided;

(3) The grantee's progress in achieving the objectives in its approved application, including any approved revisions of the application;

(4) If applicable, actions taken by the grantee to address significant barriers impeding progress; and

(5) The effectiveness of the project in promoting key elements for participants' job readiness, including—

(i) Coordination of services;

(ii) Improved attendance rates; and

(iii) Improved basic and vocational skills competencies.

(Approved by the Office of Management and Budget under Control Number 1830-0013)

(Authority: 20 U.S.C. 2313(b))

## **PART 402—NATIVE HAWAIIAN VOCATIONAL EDUCATION PROGRAM**

### **Subpart A—General**

Sec.

402.1 What is the Native Hawaiian Vocational Education Program?

402.2 Who is eligible for an award?

402.3 What activities may the Secretary fund?

402.4 What regulations apply?

402.5 What definitions apply?

### **Subpart B [Reserved]**

### **Subpart C—How does the Secretary Make an Award?**

402.20 How does the Secretary evaluate an application?

402.21 What selection criteria does the Secretary use?

### **Subpart D—What Conditions Must Be Met After an Award?**

402.30 What are the evaluation requirements?

AUTHORITY: 20 U.S.C. 2313(c), unless otherwise noted.

SOURCE: 57 FR 36733, Aug. 14, 1992, unless otherwise noted.